

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

SHUNDA WILKINS and DAVID WATSON)	
on behalf of themselves and all others)	Case No. 3:20-cv-00116-DPM
similarly situated,)	
)	Hon. D.P. Marshall Jr.
Plaintiffs,)	
)	
vs.)	
)	
SIMMONS BANK)	
)	
Defendant.)	

**DECLARATION OF DEBRA BOGO-ERNST IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT AND MOTION TO EXCLUDE TESTIMONY
OF ARTHUR OLSEN**

Debra Bogo-Ernst (IL No. 6271962) (*pro hac vice*)
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Attorneys for Simmons Bank

I, Debra Bogο-Ernst, declare as follows:

1. I am a partner with the law firm Mayer Brown LLP and lead counsel to Defendant Simmons Bank (“Simmons”) in the above-captioned proceeding. I am a member of the State Bar of Illinois and admitted *pro hac vice* to the United States District Court for the Eastern District of Arkansas. I submit this declaration in support of Simmons’s (i) Brief In Support Of Motion For Summary Judgment and (ii) Brief In Support Of Motion To Exclude Testimony of Arthur Olsen submitted herewith. I certify that I have personal knowledge of the matters asserted herein and, if called as a witness, could testify competently thereto.

Simmons’s Expert Reports

2. Attached hereto as **Exhibit 1** is a true and correct copy of the October 4, 2021 Expert Report of Gary Nesbitt (“Nesbitt Rep.”).

3. Attached hereto as **Exhibit 2** is a true and correct copy of the October 4, 2021 Preliminary Expert Report and Disclosure of Sonya Kwon (“Kwon Rep.”).

Deposition Transcripts

4. Attached hereto as **Exhibit 3** is a true and correct copy of the entire transcript of the September 14, 2021 deposition of Plaintiff Shunda Wilkins in condensed form (“S. Wilkins Dep.”). Personally identifying and/or sensitive information has been redacted to protect Ms. Wilkins’s privacy.

5. Attached hereto as **Exhibit 4** is a true and correct copy of the entire transcript of the September 15, 2021 deposition of Plaintiff David Watson in condensed form (“D. Watson Dep.”). Personally identifying and/or sensitive information has been redacted to protect Mr. Watson’s privacy.

Documents Produced by Simmons

6. Attached hereto as **Exhibit 5** are true and correct excerpts of a Simmons Welcome Book, which was provided to Mayer Brown by Simmons, containing Simmons's Terms and Conditions, Schedule of Fees and Charges, and Overdraft Privilege Account Disclosure effective in April 2015 and which Simmons produced in this litigation as WILKINS-0000551 through WILKINS-0000553, WILKINS-0000556, and WILKINS-0000562.

7. Attached hereto as **Exhibit 6** are true and correct excerpts of a Simmons Welcome Book, which was provided to Mayer Brown by Simmons, containing Simmons's Terms and Conditions, Schedule of Fees and Charges, and Overdraft Privilege Account Disclosure effective in September 2017 and which Simmons produced in this litigation as WILKINS-0001096 through WILKINS-0001106, WILKINS-0001115 through WILKINS-0001116, and WILKINS-0001118.

8. Attached hereto as **Exhibit 7** is a true and correct copy of Plaintiff Shunda Wilkins's Account Agreement Signature Card, which was provided to Mayer Brown by Simmons and which Simmons produced in this litigation as WILKINS-0001232. Personally identifying and/or sensitive information has been redacted to protect Ms. Wilkins's privacy.

9. Attached hereto as **Exhibit 8** is a true and correct copy of a Deposit Inquiry screen relating to Plaintiff Shunda Wilkins's account ending in 5378, which was provided to Mayer Brown by Simmons and which Simmons produced in this litigation as WILKINS-0001233. Personally identifying and/or sensitive information has been redacted to protect Ms. Wilkins's privacy.

10. Attached hereto as **Exhibit 9** are true and correct copies of account statements, which I understand were mailed to Plaintiff Shunda Wilkins by Simmons. These statements were provided to Mayer Brown by Simmons, and Simmons produced them in this litigation as

WILKINS-0001245 through WILKINS-0001296. Personally identifying and/or sensitive information has been redacted to protect Ms. Wilkins's privacy.

11. Attached hereto as **Exhibit 10** are true and correct copies of Notices of Non-Sufficient Funds, which I understand were mailed to Plaintiff Shunda Wilkins by Simmons. These notices were provided to Mayer Brown by Simmons, and Simmons produced them in this litigation as WILKINS-0001306 through WILKINS-0001322. Personally identifying and/or sensitive information has been redacted to protect Ms. Wilkins's privacy.

12. Attached hereto as **Exhibit 11** are true and correct copies of Bounce Protection Letters, which I understand were sent to Plaintiff Shunda Wilkins by Simmons. These letters were provided to Mayer Brown by Simmons, and Simmons produced them in this litigation as WILKINS-0001297 through WILKINS-0001305. Personally identifying and/or sensitive information has been redacted to protect Ms. Wilkins's privacy.

13. Attached hereto as **Exhibit 12** is a true and correct copy of Plaintiff David Watson's and Marilyn Watson's Account Agreement Signature Card, which was provided to Mayer Brown by Simmons and which Simmons produced in this litigation as WILKINS-0001762. Personally identifying and/or sensitive information has been redacted to protect the Watsons' privacy.

14. Attached hereto as **Exhibit 13** are true and correct copies of account statements, which I understand were mailed, or made available, to Plaintiff David Watson and joint accountholder, Marilyn Watson, by Simmons. These statements were provided to Mayer Brown by Simmons, and Simmons produced them in this litigation as WILKINS-0001763 through WILKINS-0001802.

15. Attached hereto as **Exhibit 14** are true and correct copies of Notices of Non-Sufficient Funds, which I understand were sent, or made available, to Plaintiff David Watson and

joint accountholder, Marilyn Watson, by Simmons. Simmons provided these notices to Mayer Brown, and Simmons produced them in this litigation as WILKINS-0003811 through WILKINS-0003841.

16. Attached hereto as **Exhibit 15** are true and correct copies of Bounce Protection Letters, which I understand were mailed, or made available, to Plaintiff David Watson and joint accountholder, Marilyn Watson, by Simmons. Simmons provided these letters to Mayer Brown, and Simmons produced them in this litigation as WILKINS-0003808 through WILKINS-0003810.

17. Attached hereto as **Exhibit 16** is a true and correct copy of the Watsons' Overdraft Repayment Plan Agreement for the amount of \$625.65, which was provided to Mayer Brown by Simmons and which Simmons produced in this litigation as WILKINS-0001760. Personally identifying and/or sensitive information has been redacted to protect the Watsons' privacy.

18. Attached hereto as **Exhibit 17** is a true and correct copy of the Watsons's Overdraft Repayment Plan Agreement for the amount of \$675.59, which was provided to Mayer Brown by Simmons and which Simmons produced in this litigation as WILKINS-0001761. Personally identifying and/or sensitive information has been redacted to protect the Watsons' privacy.

19. Attached hereto as **Exhibit 18** is a true and correct copy of internal Simmons correspondence dated August 17 and 18, 2015 relating to the Watson account ending in 3167, which was provided to Mayer Brown by Simmons and which Simmons produced in this litigation as WILKINS-0002396. Personally identifying and/or sensitive information has been redacted to protect the Watsons' privacy.

20. Attached hereto as **Exhibit 19** is a true and correct copy of e-mail correspondence sent to Simmons, from an email address that Mr. Watson identified as his own, dated December 26, 2015 and relating to their account ending in 3167, which was provided to Mayer Brown by

Simmons and which Simmons produced in this litigation as WILKINS-0002401. Personally identifying and/or sensitive information has been redacted to protect the Watsons' privacy.

Plaintiff Discovery Responses

21. Attached hereto as **Exhibit 20** is a true and correct copy of Plaintiff Shunda Wilkins's Second Supplemental Responses to Defendant Simmons Bank's First Set of Interrogatories dated September 7, 2021.

22. Attached hereto as **Exhibit 21** is a true and correct copy of Plaintiff David Watson's Second Supplemental Responses to Defendant Simmons Bank's First Set of Interrogatories dated September 7, 2021.

Documents Subpoenaed from Third-Party Merchants

23. Attached hereto as **Exhibit 22** are true and correct copies of documents that Mayer Brown received via subpoena from Liberty National relating to Plaintiff Shunda Wilkins, produced by Simmons in this litigation in their entirety as WILKINS-LIBERTY-0000001 through WILKINS-LIBERTY-0000016. Personally identifying and/or sensitive information has been redacted to protect Ms. Wilkins's privacy.

24. Attached hereto as **Exhibit 23** are true and correct excerpts of documents that Mayer Brown received via subpoena from Verizon Wireless relating to Plaintiff David Watson and joint accountholder, Marilyn Watson, produced by Simmons in this litigation in their entirety as WILKINS-VERIZON-0000001 through WILKINS-VERIZON-0000124. Personally identifying and/or sensitive information has been redacted to protect the Watsons' privacy.

25. Attached hereto as **Exhibit 24** are true and correct excerpts of documents that Mayer Brown received via subpoena from Progressive Insurance relating to Plaintiff David Watson and joint accountholder, Marilyn Watson, produced by Simmons in this litigation in their

entirety as WILKINS-PROGRESSIVE-0000001 through WILKINS-PROGRESSIVE-0000425. Personally identifying and/or sensitive information has been redacted to protect the Watsons' privacy.

Opinions and Testimony of Arthur Olsen

26. Attached hereto as **Exhibit 25** is a true and correct copy of the July 12, 2021 Plaintiffs' Expert Report of Arthur Olsen ("Olsen Rep.").

27. Attached hereto as **Exhibit 26** is a true and correct copy of the entire transcript of the November 19, 2021 deposition of Arthur Olsen in condensed form ("Olsen Dep."). Personally identifying and/or sensitive information has been redacted to protect Mr. Olsen's privacy.

Case Law

28. Attached hereto as **Exhibit 27** is a true and correct copy of a Minute Order dated August 29, 2014, which rules on a Motion to Certify Class Action filed in *Taylor v. Mission Federal Credit Union*, No. 37-2012-00092073-CU-BT-CTL, in the Superior Court of California (San Diego County).

Documents Produced by Plaintiff

29. Attached hereto as **Exhibit 28** are true and correct copies of documents produced by Plaintiff David Watson in this litigation as DWatson_0001 through DWatson_0060 on April 22, 2021. Personally identifying and/or sensitive information has been redacted to protect the Watsons' privacy.

Nacha Operating Rules & Guidelines

30. Attached hereto as **Exhibit 29** are true and correct excerpts of the 2015 Nacha Operating Rules & Guidelines, which is copyrighted material and is, therefore, being provided provisionally under seal.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and information based upon available information gathered from others and my own investigation and knowledge.

Executed this 13th day of December 2021, at Chicago, Illinois by:



Debra Bogdan